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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,708	10/22/2001	Eric Jeffrey Lannert	05222.00167	3465

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EXAMINER

HIRL, JOSEPH P

ART UNIT PAPER NUMBER

2121

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/868,708

Applicant(s)

LANNERT ET AL.

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>020305</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to an AMENDMENT entered November 18, 2004 for the patent application 09/868,708 filed on October 22, 2001.
2. The First Office Action of August 18, 2004 is fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 1-18 are amended. Claims 19 and 20 are new. Claims 1-20 are pending.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,549,893. Although the conflicting claims are not identical, they are not patentably distinct from each other because a computerized methodology which has source code and a time base to implement receiving, integrating, synchronizing, and evaluating represents similar functionality of the instant application.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al (WO 97/44766 referred to as **Cook**).

Examiner's Note (EN): User instructions are embodied in source code that is used to run or operate computers and to create, initialize and operate agents. Such is the way computers operate. Computer source code representation is not a patentably unique feature of a disclosure. Such concepts are manifest in Cook @ p 1, l 5-8 and p 7, l 11-16. Cook has computers and computers have source code to implement instructions. Cook has agents which are software entities configured to operate on user initiated commands to implement system functions. Computer art functions in this manner.

Claims 1, 10

Cook anticipates(a) a reception source code segment comprising source code for receiving information indicative of a goal (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 37); (b) an integration source code segment comprising source code for integrating information that motivates accomplishment of the goal for use in the presentation (**Cook**, p 1, l 5-8; p 7, l 11-16; p 8, l 9); (c) a synchronization source code segment comprising source code for synchronizing events in the presentation utilizing a time based model (**Cook**, p 1, l 5-8; p 7, l 11-16; p 1, l 5-8; Examiner's Note (EN): computers are synched with an internal clock); and (d) an evaluation source code segment comprising source code for evaluating progress toward the goal and providing feedback that further motivates accomplishment of the goal utilizing the time based model to control the presentation of information (**Cook**, p 1, l 5-8; p 7, l 11-16; p 10, l 28-31; p 8, l 8-13).

Claims 2, 11

Cook anticipates including an interactive source code segment comprising source code for presenting an interactive session and querying a user for analysis of the interactive session including a decision (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29).

Claims 3, 12

Cook anticipates a presentation source code segment comprising source code for altering the presentation based on the user's decision to further refine the accomplishment of the goal (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29).

Claims 4, 13

Cook anticipates a timing source code segment comprising source code for advancing time as the presentation proceeds (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29; EN: it is axiomatic that time will advance during the referenced events).

Claims 5, 14

Cook anticipates a presentation source code segment comprising source code for presenting a new presentation and querying a user for a new decision after the time is advanced (**Cook**, p 1, l 5-8; p 7, l 11-16; p 101, l 1).

Claims 6, 15

Cook anticipates a simulation source code segment comprising source code for simulating the management of resources utilizing the presentation (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29; EN: such is a virtual tutor, a simulated tutor).

Claims 7, 16

Cook anticipates a adjustment source code segment comprising source code for adjusting the feedback based on a current time (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29; EN: such is a virtual tutor exercising feedback).

Claims 8, 17

Cook anticipates a interface source code segment comprising source code for passing information from the presentation to an expert system to analyze the information and formulate the appropriate feedback utilizing time as a variable for analysis (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29; EN: such is interaction ... feedback).

Claims 9, 18

Cook anticipates including a simulation source code segment comprising source code for utilizing an internal clock to synchronize time (**Cook**, p 1, l 5-8; p 7, l 11-16; EN: such is a computer's internal operation).

Claim 19, 20

Cook anticipates the synchronization source code segment further comprises source code for time based simulation modeling and for receiving a user selection from a list of actions at each time period (**Cook**, p 1, l 5-8; p 7, l 11-16; p 7, l 19-29; EN: such is a virtual tutor, a simulated tutor; feedback exists from user to tutor; operation is achieved on a computer which is time based; computer master clock achieves synchronization; since the computer is master clock driven, user selection will occur during a time period).

Response to Arguments

7. The proposed amended title is acceptable.
8. The Typographical Errors corrections are acceptable.
9. Based on the response to the "Request for Information", the applicant has inferred that Smialek does not have a position against the instant application and that the Response of February 7, 2002 is complete. Therefore, the Examiner withdraws the "Request for Information."
10. The objection to the Information disclosure Statement is withdrawn.
11. The drawing objection is withdrawn.
12. The specification objection is withdrawn.
13. The abstract objection is withdrawn.
14. The nonstatutory double patenting rejections related to US Patent 6,016,486 and copending Application No. 09/868,682 have been overcome by the Terminal Disclaimer filed on November 18, 2004 related to the instant application.
15. Applicant's arguments related to Double Patenting related to US Patent 6,549,893 have been fully considered but are not persuasive.

In reference to Applicant's argument:

Claims 1-10 are rejected by the Office Action under U.S.C. 101 as claiming the same invention as that of claims 1-10 of prior U.S. 6,549,893. The Applicant has amended claims 1-9 to claim "a computer data signal embodied in a transmission medium." As amended, claims 1-9 include different subject matter than claims 1-9 of U.S. 6,549,893. Also, the Applicant has amended claim 10 to include "logic that evaluates progress toward the goal" and "logic that provides feedback, responsive to a progress indication, that further motivates accomplishment of the goal utilizing the time based model to control the presentation of information."

Examiner's response:

All computer data is involved in a transmission medium such as "wires" that connect computing components. Every computer has a logic structure used in processing. Fundamental to a computer's operation is the master clock that regulates the computer operation. A Terminal Disclaimer is required.

16. The rejections of claims 1 and 10 under 35 USC 112, second paragraph, are withdrawn.
17. The rejections of claims 1-9 under 35 USC 101 are withdrawn.
18. Applicant's arguments related to Claims 1-18 have been fully considered but are not persuasive.

In reference to Applicant's argument:

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/44766 (Cook). Regarding claims 1 and 10, the Office Action alleges that "(c) synchronizing events in the presentation utilizing a time based model (Cook, p 1, 1 5-8); Examiner's Note (EN): computers are synched with an external clock)". As cited, Cook merely teaches (Page 1, lines 58.):

This invention relates to a system and method for interactive, adaptive, and individualized computer-assisted instruction of students, preferably implemented on network connected computers.

However, claim 1 includes "a synchronization source code segment comprising source code for synchronizing events in the presentation utilizing a time based model" and claim 10 includes "logic that synchronizes events in the presentation utilizing a time based model." (Emphasis added.) For example, the instant specification, as originally filed, teaches (Page 10, line 37 - page 11, line 5. Emphasis added.):

The data modeling components could be third party modeling environments such as spreadsheet-based modeling (e.g., Excel, Formula) or discrete time-based simulation modeling (e.g., PowerSim, VenSim). The components could also be custom built in C++, VB; Access, or any tool that is ODBC compliant to provide unique modeling environments. Using the Transformation Component to wrap a third party spreadsheet component provides an easy way of integrating into an application spreadsheet-based data analysis, created by such tools as Excel. The Transformation Component provides a shell for the spreadsheet so that it can look into the domain, pull out values needed as inputs, performs its calculations, and post outputs back to the domain.

and further teaches (Page 38, top entry of table. Emphasis added.):

Time based simulation where student "chooses own adventure". Each period the student selects from a pre- determined list of actions to take. Developed on SBPC as a simplified version of the BDM manage task.

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However, Cook, in conjunction with the Examiner's Note, does not teach or even suggest these features. While computers may be synchronized with an external clock, the cited teachings do not teach "synchronizing events in the presentation utilizing a time based model".

Examiner's response:

Para 21. applies. Applicant should reference the First Office Action, p 8 , Claims 1, 10 and p 9, Claims 9, 18 where the Examiner has referred to an "internal clock" and not an "external clock." Fundamental to a computer's operation is the master clock that regulates the computer operation and to which all models running on such computer therefore become synchronized and time based. All computer operations are logic based. Limitations appearing in the specification but not recited in the claim are not read into the claim. The time-based model occurs whenever a model is run on a computer. Synchronizing events in the presentation are related to the computer's master clock that is operating and sequencing model events (synchronizing) related to a presentation function. Such is the art of computer programming.

Examination Considerations

19. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The

Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

20. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

21. Examiner's Opinion: Paras 19. and 20. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Limitations appearing in the specification but not recited in the claim are not read into the claim.

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

22. Claims 1-20 are rejected.

Correspondence Information

Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (571) 272-3685. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (571) 272-3687.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

or faxed to:

(703) 872-9306 (for formal communications intended for entry);

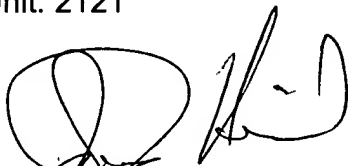
or faxed to:

(571) 273-3685 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

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A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'P. Hirl'.

Joseph P. Hirl

February 3, 2005